APPENDIX A

PIKE CIRCUIT COURT

11-20-64

Civil Action No. 5734

GEORGE LESTER BALL, ET AL., *Plaintiffs*

v.

EASTERN COAL CORPORATION, ET AL., *Defendants*

Findings of Fact, Conclusions of Law and Order and Judgment

On the 9th day of October, 1964, came the plaintiffs, by their attorneys, the defendant Eastern Coal Corporation, by its attorneys, the defendant United Mine Workers of America, by its attorneys, and defendants C. E. Beane, Matt Combs and Joe Davis, and each of them, by their attorneys.

Thereupon, plaintiffs, by their attorneys, tendered to the Court for filing their Second Amended Complaint (copies of which counsel for the respective parties plaintiffs and defendants stipulated had been served upon each of the respective defendants immediately prior to this hearing on October 9, 1964) and moved the Court that plaintiffs be permitted further to amend their complaint and amended complaint heretofore filed herein, to which motion each of the defendants severally by their respective counsel objected; and the Court having fully considered the matters alleged in the tendered Second Amended Complaint and having heard and fully considered arguments of counsel as to the proposed amendment and the objections thereto, and being fully advised in the matter and of opinion that the matters set forth in the Second Amended Complaint are neither relevant nor material to the issues in the case as alleged in the complaint and amended complaint and in

the facts as stipulated by the respective parties plaintiffs and defendants, all as set forth in the Stipulation of Facts and Further Stipulation of Facts heretofore agreed upon by the parties hereto after a hearing befor ethe Court, filed herein and made a part of the record in this case, and that therefore plaintiffs should not be permitted further to amend their complaint and amended complaint as set forth in their Second Amended Complaint, it is therefore ORDERED and ADJUDGED by the Court that plaintiffs' motion for leave to amend their complaint and amended complaint as proposed by their Second Amended Complaint be, and the same hereby is, denied, but it is further ordered that said Second Amended Complaint as tendered be filed as a part of the record herein.

Thereupon, the Court considered the written motion of defendant United Mine Workers of America, heretofore filed, to extend its motion to dismiss the complaint to the amended complaint, and there being no objection thereto and the Court perceiving none, the Court does sustain said motion.

Thereupon, this cause came on to be heard on the separate motions of the defendant Eastern Coal Corporation, the defendant United Mine Workers of America and the defendants C. E. Beane, Matt Combs and Joe Davis, and each of them, to dismiss the action, complaint and amended complaint for their failure to state a claim against the respective defendants upon which relief can be granted, and upon the said Stipulation of Facts and the Further Stipulation of Facts, and also upon motion for summary judgment filed by defendant Eastern Coal Corporation and the separate motion of defendant United Mine Workers of America to convert its said motion to dismiss upon the ground therein stated, namely, "Because the complaint fails to state a claim upon which relief can be granted", into a motion (for summary judgment; and upon the motion of defendants C. E. Beane, Matt Combs and Joe Davis,

and each of them, to make said motion of defendant United Mine Workers of America extend to and be made applicable to them, and each of them, which motion the Court is of opinion to, and does hereby, sustain, the parties plaintiff and the other parties defendant being agreeable thereto.

The Court having duly considered the allegations of the complaint as amended and the actual situation disclosed by said Stipulation of Facts and Further Stipulation of Facts, and having heard argument of counsel, and being fully advised in the premises, now makes the following:

Findings of Fact

(1) The controlling facts of the case are as set out in "Stipulation of Facts" and "Further Stipulation of Facts" heretofore agreed upon by the parties hereto after a hearing before the Court, filed herein and made a part of the record herein on May 26, 1964.

(2) Physical connection of Mines 7 and 7½ with Mines 3, 4, and 8 was made on May 17, 1953, and by telegram dated June 16, 1953, the Local Unions affected were advised by officials of District 17, UMW, that the charter of Local No. 5729 had been withdrawn and its membership consolidated with that of Local No. 5737. All men transferred to the consolidated mine prior to May 17th were recognized as "new men" but when certain men were laid off on June 26, 1953, the status of some thirty-three men transferred between May 17, 1953, and June 16, 1953, was in question and was considered by Eastern and the Local Mine Committee, and agreement was reached. Another reduction in the working force occurred October 26, 1953, and some of the affected employees being dissatisfied with the decision reached in June appealed to higher UMW authority. On that appeal the President, Vice President, and Chief Field Representative of District 17 held that the effective date of the consolidation was May 17th when the

two mines were physically united and that the seniority of the Union Members should be determined accordingly. That decision was communicated to the Local Mine Committee by letter dated November 2, 1953, and that Committee promptly took it up with Eastern as a matter to be negotiated further under the Agreement. Eastern agreed with the Local Mine Committee and as of November 9, 1953, adjusted its payroll to conform to the UMW position.

(3) The defendant union, United Mine Workers of America, was and is vested with authority to approve the consolidation of Eastern's mines 7 and 7½ with its mines 3, 4 and 8 into a single producing unit; to withdraw the charter previously issued to Local No. 5729 serving mines 7 and 7½ and give to Local No. 5737, previously serving mines 3, 4 and 8, jurisdiction over the entire consolidated mine; to determine the effective date of such consolidation, and to permit among Union members the "dovetailing" of seniority rights for all members under the jurisdiction of the consolidated local as of such effective date.

(4) The action taken by the Union in resolving such seniority questions as expressed in the decisions of November 2, 1953, made by the then President, the then Vice President and the then Chief Field Representative of District 17 of defendant Union, which decision, under the internal appellate procedure provided by the Union, was affirmed in turn by the District 17 executive board on May 15, 1955; by a commission of the International Union composed of Pete Phillippi, Chairman, and Joseph Yablonsky, both members of the UMW Executive Board, on November 16, 1955, and by the International Executive Board in Washington, D. C. on May 17, 1956, was not an arbitrary or unreasonable exercise of the authority vested in the Union.

(5) Such questions being within the authority and province of the Union to resolve, the defendant, Eastern Coal Corporation, properly abstained from participating in or

interfering with the Union's consideration and resolution of the questions, but Eastern's decision to accommodate itself to the Union's position as stated in the November 2, 1953, letter and not thereafter disaffirmed, was reached in the process of continuing collective bargaining and could not and did not place it in violation of the bargaining agreement.

CONCLUSIONS OF LAW

(1) There was no breach of fiduciary duty by the defendant, United Mine Workers of America, to the plaintiffs.

(2) There was no breach of fiduciary duty by the defendants, C. E. Beane, Matt Combs, and Joe Davis, or either or any of them.

(3) Defendant, Eastern Coal Corporation, did not violate its contract with the Union or any contractual obligation to the plaintiffs herein.

(4) There is no genuine issue as to any material fact; and

(5) By reason of the foregoing, defendant, Eastern Coal Corporation, is entitled to judgment as a matter of law.

(6) By reason of the foregoing, and under principles enunciated in *Humphreys* v. *Moore*, 375 U.S. 355, 11 L. ed. 2d 370 (1964), defendants United Mine Workers of America, C. E. Beane, Matt Combs, and Joe Davis each is entitled to judgment as a matter of law.

JUDGMENT

It is hereby ORDERED that the respective motions of defendant, Eastern Coal Corporation, of defendant, United Mine Workers of America, and of defendants C. E. Beane, Matt Combs, and Joe Davis, and each of them, to dismiss the complaint, the amended complaint and action as to

each of them and their respective motions for summary judgment be, and the same hereby are, granted; and it is

FURTHER ORDERED, that judgment be, and it hereby is, entered herein in favor of defendant Eastern Coal Corporation, of defendant United Mine Workers of America, and of defendants C. E. Beane, Matt Combs and Joe Davis, and each of them, dismissing this action as to each of them, that said plaintiffs take nothing by this action and that each of the said defendants do go thereof without day, and that each of the defendants recover against the said plaintiffs, and each of them, its or his costs; to which rulings and actions of the Court, plaintiffs, and each of them, object and except.

ENTER: JAMES B. STEPHENSON
Judge, Pike Circuit Court,
Division I